XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A.No.95 सन् 2003 (14)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPLICANT:
CLAIMANT

Sheela Chandravanshi, Aged about 34 years, W/o Hariprem Chandravanshi, R/o Gaitara, P.S. Kharora, District Raipur (C.G.)

-Versus-

RESPODNENTS:
NON-APPLICANTS

1. Nasimul Aktar @ Moti, S/o Moh. Gaisuddin Musalman, C/o Sampat Kumarshah, Kolkata Road Service, Bhanpuri, P.S. KHamtarai, District Raipur (CG)

2. Sampat Kumarshah, Through Kolkata Road Service, Bhanpuri, P.S. Khamtarai, District Raipur (CG)

3. The New India Insurance Company Ltd., Through Divisional Manager, Jail Road, Raipur, District Raipur.

(Miscellaneous Appeal under Section 173 of the M.V. Act, 1988)

Single Bench: Hon'ble Mr. Justice L.C. Bhadoo

21-6-2007:-

Shri S.C. Verma, counsel for the appellant.

Shri N.K. Agrawal, Sr. Advocate with Shri Deepak Gupta, Advocate for respondent No.3.

Applicant/claimant Sheela Chandravanshi, who is the mother of deceased Sagar aged about 6 years and widow of Hariprem

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Chandravanshi, has preferred this appeal being aggrieved by the award dated 20th November, 2002 passed by the 1st Additional Motor Accident Claims Tribunal, Raipur in Claim Case No.36/2001under which learned Tribunal awarded compensation to the tune of Rs.52,000/-.

The claimant has preferred this appeal that award passed by the Tribunal is bad, illegal, inappropriate and against the well settled principles of law, therefore, same deserves to be modified and enhanced. The claims Tribunal ought to have calculated the compensation based on notional income as prescribed under Section 163-A of the M.V. Act.

Brief facts necessary for the disposal of this appeal are that on 18-8-2001 at about 5.25 p.m. deceased Sagar aged about 6 years was traveling along with his father on Suzuki motorcycle No. M.P.-24/YA-2412. When the motorcycle was in front of Indore Kamani Services, on Raipur Tatibandh Road, truck bearing No.WB-25/4164 dashed against the motorcycle. The driver of the said truck was Nasimul Aktar, respondent No.1 herein. The said truck was insured with respondent No.3 herein i.e. the New India Insurance Company Ltd.. The claimant filed a claim claiming Rs.2,16,000/- for maintenance of the family, Rs.10,000/- towards funeral expenses & Rs.15,000/- towards loss of affection, mental agony and shock, in all, claimant claimed Rs.2,41,000/-. Learned Tribunal held that at the time of accident Sagar was aged about 6 years, therefore, no inference or presumption can be drawn regarding his income, hence, minimum compensation of Rs.50,000/- can be awarded and Rs.2,000/- can be awarded against funeral expenses, therefore, in all, Rs.52,000/- was awarded.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

In the matter of **State of Haryana and Anr. V. Jasbir Kaur and Ors.** reported in **2003 (7) SCC 484** the Apex Court held that:-

> "It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be "just and reasonable". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The court and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particulars facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be

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आदेश पत्रक (पूर्वानुबद्ध)

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considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just."

In a recent judgment of the Apex Court in the case of **Kaushlya Devi V. Karan Arora & Ors.** reported in **2007 AIR SCW 3424** the Apex Court upheld the award of Tribunal granting compensation of Rs.1,00,000/-. In that case, death of 14 years old boy in motor accident occurred. The Court held that the said compensation is proper. Moreso, when father had died and mother was only survivor.

In the present case also, mother is the only survivor as argued by learned counsel for the appellant that husband of the claimant and father of the deceased died in the same accident. In that claim case, respondent No.3 has compromised the matter and compensation to the tune of Rs.13 lakhs has already been awarded to the applicant/claimant. As the child was 6 years only, therefore, having considered totality of the circumstances and considering judgment of the Apex Court in the case of **Kaushlya Devi** (Supra), I am of the considered opinion that if total compensation of Rs.1 lakh is awarded, that will be just and reasonable.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	In the result, the appeal succeeds. The award passed by the Tribunal is enhanced by Rs.48,000/- in addition to Rs.52,000/- already awarded by the Tribunal. The claimant shall be entitled for interest @ 9% on the amount of Rs.48,000/- from the date of filing of the application. Sd/- L.C. BHADOO Judge	

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